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Opinion No. 04-147

Federal Administrative Law Judge's Authority to Perform Marriage

QUESTION

Does a federal Administrative Law Judge have authority under Tenn. Code Ann. § 36-3-301 to perform a marriage?

OPINION

No. A federal Administrative Law Judge does not have authority under Tenn. Code Ann. § 36-3-301 to perform a marriage.

ANALYSIS

In Tennessee, the law of marriage is not controlled by the common law but rather is a matter of statute. *Bryant v. Townsend*, 188 Tenn. 630, 221 S.W.2d 949 (1949). Accordingly, a marriage ceremony must be performed by a person authorized under Tennessee law in order to be valid. *Smith v. North Memphis Savings Bank*, 115 Tenn. 12, 89 S.W. 392 (1905).

The Legislature has designated the persons who may solemnize marriages. Tenn. Code Ann. § 36-3-301(a). This list includes judges of this state. *Id.* In particular, this statute provides:

For the purposes of this section, the several judges of the United States courts, including United States magistrates and United States bankruptcy judges, who are citizens of Tennessee are deemed to be judges of this state.

Id.

This statute does not specifically recognize the authority of a federal Administrative Law Judge to perform a marriage. While federal Administrative Law Judges perform some judicial functions, such officials are employees of the Executive Branch and are not judges of the United States courts. 5 U.S.C. § 556. *See also Butz v. Economou*, 438 U.S. 478, 98 S.Ct. 2894, 57 L.Ed.2d

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895 (1978). Therefore, a federal Administrative Law Judge does not have authority under Tenn. Code Ann. § 36-3-301 to perform a marriage.

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